(1) (3)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 300 OF 2005

PETITIONER

South Eastern Coalfields Limited, A Government Company Registered under the Companies Act, 1956 which is run, managed and controlled by the Government of India; through the Chairman cum Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur (C.G.)

P.R. No. 28/1/05 Presented by Shri Sunil Mishra dated 24/1/05

VERSUS

RESPONDENTS

1. M/S Triupati Constructions Structural Engineers & Building Contractors, Burhar, district Shahdol (M.P.)
2. The Arbitrator.
3. The Additional District Judge, Korba.

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA.

(56)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 300/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश **28/3/2005**	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Dr. N.K. Shukla, Sr. Advocate, with Sushri Ritu Mishra, Advocate, for the petitioner. **Shri V.R. Rao, Advocate, for the respondent no.1.** **Learned counsel for respondent no.1 has produced certain documents for placing the same on record.** **The documents are taken on record.** **Heard.** **Order dictated.** **Typed separately, signed and dated.** **Sd/-** **Fakhruddin** **Judge**	

GRPRJ—FS/350—12/2000—50,000.

(54)

HIGH COURT OF CHHATTISTGARH AT BILASPUR

WRIT PETITION NO.300/05

South Eastern Coalfields Ltd.

Vs.

M/s Tirupati Constructions Structural Engineers & Building Contractors & ors.

Dr. N.K. Shukla, Sr. Advocate, with Sushri Ritu Mishra, Advocate, for the petitioner.

Shri V.R. Rao, Advocate, for respondent no.1.

O R D E R

Heard learned counsel for the parties.

2. By this petition, the petitioner has prayed for setting aside the order dated 30.10.1996 passed by the District Judge, Bilaspur in Civil Suit No.21-A/1996.

3. Admittedly, contract for construction of Training Institute at Gevra Project of Korba West Area was awarded to respondent no.1 M/s Tirupati Constructions Structural Engineers & Building Contractors vide order No.ACE(C)SECL/BSP SRB(W)/W.O./11010-15 dated 24.4.1989. Clause 9 of the agreement provides for settlement of all disputes by recourse to arbitration. Under the said clause, Chairman-cum-Managing Director of SECL is authorized to nominate a person to whom disputes are to be referred for arbitration. Respondent no.1 filed a petition under Section 8 of the Arbitration and Conciliation Ordinance, 1996 on 22.7.1996. The case of respondent No.1 was that huge sum on account of work done was due to it in relation to the contract. The respondent No.1 called upon the petitioner to arrange payment but no action to release payment has been initiated. As such, the respondent No.1 as per letter dated 05.07.1996 called upon the Chairman of the petitioner company to nominate a person to whom dispute is referred. It was also indicated in the said letter that in case nothing is heard for a period of 15 days, respondent No.1 would be entitled to move the Court to refer the

matter as per Arbitration clause. Since the Chairman failed to take any action on the request, prayer was made to refer the dispute to the Arbitrator. As per the respondent No.1, it was entitled to get Rs.6,09,80,771.90P plus interest @24.9% per annum with quarterly rest.

4. The written statement was filed by the petitioner company in August, 1996 and the copy was supplied to other side. The petitioner contended that respondent No.1 could not complete the work as per the contract within the scheduled time i.e. 29.10.1990 and the period was extended from time to time but the work could not be completed. It was also contended that the work of sound system and other works were not done. The sound system was to be installed as per the contract but the contractor did not prove the equipments and the work was not done according to specification and the petitioner contended that no payment was due and the SECL is entitled to Rs.3,72,258.88P.

5. The District Judge after hearing the parties passed the order dated 30.10.1996. The relevant paragraphs No.7, 8 and 9 are quoted below:

> *"7. As per the arbitration clause 9, all disputes or differences whatsoever arising between the parties out of or relating to the construction meaning and operation or effect of this contract or breach thereof shall be settled by a sole arbitrator appointed by C.M.D. of South Eastern Coalfields Ltd. and the award of arbitrator shall be final and binding on the parties. The arbitrator may from time to time with the consent of the parties enlarge the time for making and publishing the award. The arbitration proceedings shall be in accordance with the Arbitration Act 1940.*
>
> *8. Thus looking to the pleadings of the parties, there is dispute relating to or arising out of the contract reached between the parties and the disputes as disclosed in the application filed by the plaintiff and the written statement filed by the defendant are liable to be referred to the arbitrator appointed by the Chairman-cum-Managing Director of the SECL as per arbitration clause.*
>
> *9. Consequently, the disputes or differences whatsoever arising between the parties out of or in relating to the construction meaning and operation effected of this contract or breach thereof as disclosed in the application and the reply submitted by the*

(6)

defendants are referred to the sole arbitrator appointed by the Chairman-cum-Managing Director of the South Eastern Coalfields and the award passed by the arbitrator shall be final and binding on the parties. The arbitrator so appointed is directed to submit his written award within four months from the date of receipt of the order of reference. The certified copy of the agreement be also forwarded to the arbitrator alongwith the order of reference."

6. Pursuant to the above said order, on 31.10.1996 reference was made to the Chairman-cum-Managing Director. The Arbitrator was to be appointed by the Chairman-cum-Managing Director, South Eastern Coalfields Ltd. and the Arbitrator was to make an award in writing. The order of reference is quoted below:

"The disputes or differences whatsoever arising between the parties out of or in relating to the construction meaning and operation effected of this contract or breach thereof as disclosed in the applicant and the reply submitted by the defendants as ordered by this Court dated 30.10.1996 are referred to the sole arbitrator appointed by the Chairman-cum-Managing Director of the South Eastern Coalfields and he is to make ward in writing and the parties would be free to adduce details of claims and counter claims and evidence documentary and/or oral before him for such determination.

The arbitrator so appointed is directed to submit his written award within four months from the date of receipt of the order of reference.

The certified copy of the agreement is also forwarded to the arbitrator along with the order of reference.

Given under my hand and the seal of this Court this 31st day of October 1996."

7. Learned counsel for respondent No.1 pointed out that initially the Arbitrator was appointed by the Chairman, who could not complete the task and thereafter the second Arbitrator was appointed and the award was submitted before the Court on 26.09.2003.

8. It is pointed out by learned counsel for respondent No.1 that against the order of reference dated 31.10.1996, the petitioner SECL had preferred an appeal bearing M.A.No.1358/96 before the High Court of M.P. at Jabalpur. Said appeal was rejected under Order 41 Rule 3 CPC vide order dated 11.04.1997 after hearing the parties. The said order is quoted below:

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"They are heard. Learned counsel for the respondent points out that there is a detailed order of reference, passed by the Court below. The memorandum of appeal is not accompanied by the certified copy of the impugned order of reference. Instead, the learned counsel for the appellant has annexed a copy of order of reference, supplied to him, containing only concluding paragraph of the order of reference.

Therefore, in view of the fact that the memorandum of appeal is not accompanied by the certified copy of the impugned order of reference, the memorandum of appeal, filed by the appellant, is rejected, in exercise of powers under Order 41 Rule 3 of the Code of Civil Procedure."

9. Learned counsel for respondent No.1 contended that the order dated 11.04.1997 passed in M.A.No.1358/96 was not challenged anywhere. It is contended that the petitioner in the memo of appeal has not at all mentioned and whispered about this. It is further contended that the petitioner has filed an application before the Court of Additional District Judge, Korba under Section 151 CPC on 17.12.2004. The reply was filed by the respondent No.1. It is stated that the same is pending consideration. It is also stated that in the application filed under Section 151 CPC the grounds, which have been taken, are also taken in the instant petition. The petitioner has mentioned about the filing of the application in para 5.6 of the instant petition. Para 5.6 of the instant petition is pertinent and quoted below:

"On 17.12.2004 an application under Section 151 of Code of Civil Procedure was filed by the petitioner for setting aside the reference made by the learned District Judge on the ground that he is no jurisdiction to refer the matter on account of repealed Arbitration Act of 1940 of which Section 20 enables him to refer the matter to the Arbitrator where no suit is pending. It is respectfully submitted that the learned Additional District Judge, Korba fixed the case for final hearing on 05.02.2005 and along with final hearing he will also hear the application, which goes to the route of the Arbitration process itself and therefore, the present petition."

10. Learned counsel for the petitioner contended that the order dated 30/10/1996 is illegal. It is without jurisdiction. He reiterated the grounds.

11. Per contra learned counsel for respondent No.1 contended that the aforesaid questions having been raised before the Court below,

the Court seized of the matter. It is further contended that the question of jurisdiction also having been raised, it is before the Court.

12. Learned counsel for respondent No.1 submitted that this petition has been filed after 9 years, which is highly belated. It is submitted that the matter is now fixed before the Court below on 01.04.2005 for hearing arguments.

13. Learned counsel for respondent No.1 pointed out that the substantial relief sought for in this petition is to set aside the order passed by the learned District Judge in Civil Suit No.21A/1996 dated 30.10.1996. Consequential the Arbitration Award passed by the Arbitrator on the ground of void ab initio for lack of jurisdiction.

14. This Court has considered the rival contentions. The petitioner is raising the questions, which it has already raised before the District Court, before filing of the instant petition, vide application dated 17.12.2004 and the reply has also been filed. The petition does not contain even a whisper that order of reference was challenged before the High Court of M.P. The matter is pending before the District Court and all these questions have been raised pending adjudication.

15. Having given thoughtful consideration, in the opinion of this Court, once the matter is pending before the District Court, two parallel proceedings should not be allowed to continue. The jurisdiction under Article 226/227 of the Constitution is discretionary and extraordinary. No case is made out for exercising extra ordinary jurisdiction under Article 226/227 of the Constitution of India at this stage.

16. Before parting, it is made clear that the District Court shall consider and decide the matter on its own merits in accordance with law, without being influenced by any of the observations made herein above.

17. Accordingly this petition stands disposed of.

18. Along with the copy of this order, the record of the Court below be sent forthwith by a special messenger.

Sd/-
Fakhruddin
Judge